

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 19 Public School Buses

SPONSOR(S): Education Committee; K-20 Competitiveness Subcommittee; Nelson and others

TIED BILLS: **IDEN./SIM. BILLS:** SB 344, SB 348

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) K-20 Competitiveness Subcommittee	13 Y, 0 N, As CS	Muller	Ahearn
2) PreK-12 Appropriations Subcommittee	12 Y, 2 N	Seifert	Heflin
3) Education Committee	14 Y, 3 N, As CS	Muller	Klebacha

SUMMARY ANALYSIS

The bill authorizes school districts to place commercial advertisements on the exterior of a school bus. The school district must implement policies to address, at a minimum, reimbursement for all costs incurred for the support of the advertising; content restrictions on advertisements; and standards related to the design, placement, and size of advertisements. While advertising on buses is currently prohibited by State Board of Education rule, school districts may sell advertisements in other locations. Some school districts have policies in place outlining the sale of advertisements on school property.

A few states currently permit advertisements on school buses.

School districts must allocate 50 percent of the revenue generated through advertisements on school buses to school district transportation; 40 percent to other programs as determined by the school district; and 10 percent to the district's driver education program, of which 30 percent must be allocated for behind the wheel instruction. If a district does not offer a driver education program, the 10 percent allocated for that program may be allocated for other programs as determined by the district.

The bill has an indeterminate positive fiscal impact on school districts. See FISCAL ANALYSIS.

The bill provides an effective date of July 1, 2012.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

The State Board of Education has rulemaking authority to establish specifications for public school buses.¹ The State Board of Education has adopted rule 6A-3.0291, F.A.C., which incorporates by reference the Florida School Bus Specifications.² The Florida School Bus Specifications contain a requirement that the lettering and trim on buses “may include, but shall be limited to, lettering, trim, symbols, markings and coloration specified in the National School Transportation Specifications and Procedures.”³ The Florida Department of Education has interpreted rule 6A-3.0291, F.A.C., which incorporates the Florida School Bus Specifications, to prohibit advertisements on school buses.⁴

The Florida School Bus Specifications and the National School Transportation Specifications and Procedures prescribe the coloration, lettering, identification, and markings that must be installed on the exterior of public school buses. For example, public school buses are required to be painted National School Bus Yellow with black trim and a white roof. A public school bus must also have retroreflective striping and lettering identifying the school district and bus numbers.⁵ The National School Transportation Specifications do not prohibit exterior advertisements.

While school districts cannot advertise on school buses because of Florida rule requirements, they do have some experience selling advertisements in other locations. A few school districts sell advertisements on school property or are considering doing so.⁶ School districts are also expanding their existing policies which have permitted the sale of advertisements in yearbooks and on athletic facilities.⁷ A policy recently implemented by one school district permits advertising on vehicles other than school buses, websites, newsletters, school supplies, clothes, school signs, uniforms, and other venues within the discretion of the superintendent. The policy specifies prohibited content, such as advertisements containing profanity; promoting alcohol, tobacco, illegal drugs, or other products harmful to minors; and promoting a religion.⁸

A few states currently allow advertising on school buses, including Colorado, Arizona, New Mexico, Texas, New Jersey, and Utah.⁹ Colorado, for example, has had policies in place permitting the sale of advertisements on school buses since 1994.¹⁰ The Colorado Administrative Code outlines the parameters for the advertisements, specifying that the advertisements may not interfere with lettering, lamps, and other safety requirements. The code also establishes the approval process for

¹ Rule 6A-3.0291, F.A.C.; s. 1006.25, F.S.

² Florida School Bus Specifications, *incorporated by reference into* rule 6A-3.0291(1), F.A.C.

³ *Id.*

⁴ Email, Administrator, School Transportation Management, Florida Department of Education (Nov. 15, 2011).

⁵ *See generally*, Florida Revised 2008 School Bus Specifications, *available at*

http://www.fldoe.org/board/meetings/2008_06_17/2008Bus.pdf.

⁶ Telephone interview with Senior Director, Labor and Legislative Relations, Orange County School Board (Oct. 10, 2011); Orange County School District, for example, has had policies in place for two years regarding the sale of advertisements around campus.

Nightly News with Brian Williams, “*Sign of the Times*”, October 1, *available at*

<http://www.msnbc.msn.com/id/3032619/vp/44742428#44742428> (last visited Jan. 24, 2012).

⁷ Anne Martin, *Flagler officials ponder selling ads on school property*, Daytona Beach News Journal, November 1, 2011, *available at* <http://www.news-journalonline.com/news/local/flagler/2011/11/01/flagler-officials-ponder-selling-ads-on-school-property.html> (last visited Jan. 24, 2012); Cara Fitzpatrick, *Broward schools consider ads on buses, naming rights for schools*, Sun Sentinel, October 10, 2011, *available at* http://articles.sun-sentinel.com/2011-10-10/news/fl-broward-school-advertisements-20111009_1_broward-schools-school-rooftops-school-budget (last visited Jan. 24, 2012).

⁸ District School Board Policy Manual of Flagler County Florida, Policy 904, *available at*

http://boardpolicy.flaglerschools.com/index.php?title=904_-_Advertising_in_Schools (last visited Jan. 24, 2012).

⁹ John Rosales, *Advertising on School Buses Softens the Budget Crunch*, NEA Today, July 13, 2011, *available at*

<http://neatoday.org/2011/07/13/advertising-on-school-buses-softens-the-budget-crunch/> (last visited Jan. 24, 2012).

¹⁰ Telephone interview with Senior Consultant, Transportation Unit, Colorado Department of Education (Oct. 10, 2011).

advertisements.¹¹ Approximately ten school districts throughout Colorado have chosen to sell ads on their buses. The allocation of revenue from the ads is left entirely to the discretion of each individual school district.¹² It is estimated that school districts in Colorado raise 5,000 to 10,000 dollars per bus per year through the sale of advertisements, but there is no fixed amount that any given school district earns from year to year, and the earnings vary depending upon the type of school district.¹³

New Mexico's law prohibits any advertisements that involve obscenity, sexual material, gambling, tobacco, alcohol, political campaigns or causes, religion or promoting the use of drugs, as well as general content that is harmful or inappropriate for school buses as determined by the New Mexico Department of Education. The law specifies that advertisements must not interfere with national and state requirements for marking, lights, and signs, and that the advertiser is required to pay for all costs of advertising on the school bus.¹⁴

Effect of Proposed Changes

The bill authorizes commercial advertisements to be placed on the exterior of a school bus in accordance with school district policies. At minimum, the school district policy must address:

- **Reimbursement.** The school district policy must allow the district to be reimbursed by the advertisers for all costs incurred by the school district and its contractors for support of the advertising, including but not limited to, retrofitting buses, storing advertising, attaching advertising to the bus, and related maintenance.

The sale of advertisements may have a positive fiscal impact for participating districts. However, without specific information regarding the number of advertisements sold, the cost of the advertisements, and the type of market each school district covers, the amount cannot be determined.

- **Content Restrictions.** The school district policy must prohibit advertising and advertising images that solicit the sale, or promote the use, of alcoholic beverages, tobacco products, prescription drugs, or any materials, compounds, mixtures, or preparations that contain hallucinogenic substances within specific chemical designations listed in Schedule I as enumerated in s. 893.01, F.S.; are discriminatory in nature or content; imply or declare endorsement of the product or service by the school district; contain material that is sexual in nature; are inappropriate for or insensitive to children or the community; contain material that is political in nature or relates to a political activity, campaign, or candidate; contain material effecting the establishment of religion; are false, misleading, or deceptive; promote an illegal activity or antisocial behavior; contain material that promotes any form of pari-mutual wagering as identified in ch. 550, F.S., or internet gaming; or distract from the effectiveness of required safety warning equipment.

School districts may experience First Amendment right to free speech issues that can be mitigated by applying uniform policies regarding restricted content. Uniformity may prevent districts from determining prohibited content on an ad hoc basis, which could open the school districts to allegations of discrimination or lead to potential litigation regarding the content of advertisements.

- **Minimum Standards.** The school district policy must specify the design, placement, and size of signage on the exterior of a school bus. The policy must also include minimum standards addressing the cost of advertising; the designation of individuals authorized to sell and approve the advertising; and specification of how the advertising will be attached, if not painted on the bus.

¹¹ *Id.*, citing to 1 Colo. Code Regs. s. 301-25 (2007).

¹² *Id.*

¹³ Telephone interview with Senior Consultant, Transportation Unit, Colorado Department of Education (Oct. 10, 2011).

¹⁴ N.M. Stat. s. 22-28-1 (2011).

- Physical Restrictions. The school district policy must prohibit advertisements that extend from the body of the bus so as to allow a handhold or pose a danger to pedestrians; cover any structural or sheet metal damage or alteration; interfere with the operation of any door, window, required lettering, lamp, reflector, or other device; are placed on a side emergency door or the back of the bus; interferes with school bus identification; or are digital or electronic.

School district restrictions will help to maintain safety standards associated with school buses.

- Equipment Standards. The school district policy must require a school bus with advertising to meet both the Federal Motor Vehicle Safety Standards and the Florida School Bus Specifications.

Minimum equipment standards, combined with the national and statewide safety specifications, provide uniformity throughout the districts. Signage requirements provide a consistent approach for implementation.

- Limits on Advertisements. The school district policy must restrict the number of advertisements to no more than two, and the size of each advertisement to no larger than 2 feet high by 6 feet long.

A school bus that does not comply with the bill's requirements must be withdrawn from use as a school bus until it meets the requirements.

Revenue generated from the sale of advertisements must be remitted to the respective school district. School districts must allocate 50 percent of the revenue generated through advertisements on school buses to school district transportation; 40 percent to other programs, as determined by the school district; and 10 percent to the district's driver education programs, of which 30 percent must be allocated for behind the wheel instruction.

If a school district does not offer a driver education program, the 10 percent allocated for such program may be allocated to other programs as determined by the district. Drivers education is a not a required course; however 50 school districts, as well as the Florida Virtual School, include a driver education program in their curriculum. Of those school districts offering a driver education program, 43 school districts include "behind the wheel" instruction as part of the program.¹⁵

Opponents of the bill suggest that advertisements on school buses will create safety risks for students by distracting drivers, who may then fail to notice if the bus has stopped or if children are exiting the bus. General research has been conducted regarding distracted driving, but there is no specific research regarding the impact advertising on school buses has on safety.¹⁶ With their current appearance, school buses are estimated to be eight times safer than smaller passenger vehicles, according to data from the National Highway Traffic Safety Administration.¹⁷

B. SECTION DIRECTORY:

Section 1. Amends s. 1006.25, F.S., relating to school buses, to authorize school districts to sell advertisements on the exterior of school buses and to provide the required elements a school district's policy on selling advertisements must contain.

Section 2. Provides an effective date of July 1, 2012.

¹⁵ Florida Department of Education, *2012 Agency Bill Analysis for HB 19* (Aug. 25, 2011).

¹⁶ Florida Association for Pupil Transportation, *FAPT Position Paper, Advertising on School Buses*, January 2011.

¹⁷ National Highway Safety Administration, *School Bus Safety: Crashworthiness Research*, April 2002, available at <http://www.nhtsa.gov/DOT/NHTSA/NRD/Multimedia/PDFs/Crashworthiness/SchoolBus/SBReportFINAL.pdf>.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill authorizes school districts to sell advertisements on the exterior of school buses to raise revenues to be used for school district transportation and other programs as determined by the school district.

It is unknown how many school districts will choose to sell advertisements and the amount districts will charge. The bill will raise revenue for participating school districts, but the specific fiscal impact cannot be determined at this time.

2. Expenditures:

None. The bill requires school districts to be reimbursed by the advertiser for all costs incurred by the school district and its contractors for supporting the advertising.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to affect county or municipal governments.

2. Other:

The bill authorizes school districts to place advertisements on school buses, subject to certain limitations. When determining the permitted content for advertisements, school districts "will need to balance First Amendment commercial speech rights with prohibitions on objectionable content,"¹⁸ and create and apply policies in a uniform manner that avoids viewpoint discrimination.

¹⁸ Florida Department of Education, *2012 Agency Bill Analysis for HB 19* (Aug. 25, 2011).

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On December 7, 2011, the K-20 Competitiveness Subcommittee adopted one amendment and the bill was reported favorably as a committee substitute. The amendment added prohibitions on advertisements that promote prescription drugs, effect the establishment of religion, and contain material that promotes pari-mutual wagering as outlined in ch. 550, F.S.

On January 26, 2011, the Education Committee adopted one amendment and the bill was reported favorably as a committee substitute. The amendment added prohibitions on advertisements that promote any materials, compounds, mixtures, or preparations that contain hallucinogenic substances within specific chemical designations listed in Schedule I as enumerated in s. 893.01, F.S., and internet gaming.